UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBER**
	:	
JAMIE ALAN WALKER	:	05-13264-WHD
CATHERINE BELL WALKER,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTORS.	:	BANKRUPTCY CODE

ORDER AND NOTICE OF RESET HEARING

The so-called "means test" of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") determines whether a Chapter 7 case is an "abuse," in part, by reference to payments "scheduled" as "contractually due" to secured creditors in the sixty months following the filing of the case. *See* 11 U.S.C. § 707(b)(2)(A)(iii). At issue here is whether the Debtors may include in the means test calculation installment payments on secured debts if the debtor intends to surrender the collateral after filing the case.

Section 707(b), as amended by the BAPCPA[1] applies to the Debtors' Chapter 7 case. Accordingly, the Debtors were required to file a statement of current monthly income on Official Form B22. *See* FED. R. BANKR. P. (Interim Rule) 1007(b)(4); Official Form B22(A). In Chapter 7 cases, Form B22 is used to determine whether the debtor passes or fails the means test, and the BAPCPA requires the U.S. Trustee to review Form B22 and all other materials a debtor files to determine whether a presumption of abuse has arisen. *See* 11 U.S.C. § 704(b)(1)(A). Following her review of the Debtors' Form B22 and other

[1] *See* S. 256, Pub. L. 109-8, 119 Stat. 23 (2005).

documents filed by the Debtors, the U.S. Trustee filed a Notice of Presumed Abuse.

The Debtors responded to the Notice, asserting that no presumption of abuse has arisen. The U.S. Trustee then filed a Motion to Dismiss for Abuse pursuant to section 707(b)(1) and 707(b)(3). On January 27, 2006, the Court held a hearing on the issue of whether a presumption of abuse has arisen. At the conclusion of the hearing, the Court took that issue under advisement and continued the hearing on all other issues in connection with the U.S. Trustee's Motion to Dismiss pending the resolution of the presumption issue. The following shall constitute the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052 in this core proceeding under 28 U.S.C. § 157(b)(2)(A).

FINDINGS OF FACT

On the petition date, the Debtors owned a residence subject to a first mortgage held by Washington Mutual Home Loans and a second mortgage held by Homecomings Financial. The Debtors also owned four vehicles, a 2000 Ford F-150, a 2000 Chevrolet Blazer, a 1989 Toyota pick-up truck, and a 1992 Geo Storm. The F-150 was subject to a lien held by AmSouth Bank, and the Blazer was encumbered by a lien held by Fidelity Bank. The Debtors owned the remaining two vehicles free and clear.

In their Statement of Intention, filed under section 521(a)(2)(A) and Interim Rule 1007, the Debtors stated their intent to surrender their residence and the Blazer and to retain

the F-150 by reaffirming the debt owed to AmSouth. The Debtors have reaffirmed the AmSouth debt, and the automatic stay has been lifted with regard to the residence and the Blazer.

CONCLUSIONS OF LAW

Under section 707(b)(1), the court, after notice and a hearing, may dismiss a Chapter 7 case or, with the debtor's consent, convert it to Chapter 13, if the court finds that granting relief under Chapter 7 would be an abuse of the provisions of Chapter 7. *See* 11 U.S.C. § 707(b)(1). "In considering . . . whether the granting of relief would be an abuse of the provisions of [Chapter 7], the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of . . . 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or . . . $10,000." *See id* § 707(b)(2)(A)(I). This presumption can be rebutted by a demonstration of "special circumstances," such as a serious medical condition or active duty military service, which justify additional expenses or adjustments to current monthly income. *Id*. § 707(b)(2)(B).

For purposes of this test, the debtor's current monthly income ("CMI) is "the average monthly income from all sources that the [debtor and spouse receive] without regard to whether such income is taxable income, derived during the 6-month period ending on . . . the last day of the calendar month immediately preceding the date of the commencement of

the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii)." *Id*. § 101(10A). Section 707(b) permits the debtor to subtract from CMI certain expenses. The applicable expenses are generally established by the IRS National Standards and Local Standards for the area in which the debtor resides, but, in some instances, the debtor is permitted to deduct actual expenses. *See id*. § 707(b)(2)(A)(ii). Debtors are to use the expenses in effect as of the petition date. *See id*. § 707(b)(2)(A)(ii)(I). Additionally, debtors are permitted to deduct average monthly payments for secured and priority debts. *See id.* § 707(b)(2)(A)(iii).

At issue in this case is the proper interpretation of the latter provision of the statute, which permits a deduction for secured debt payments. The Debtors seek to deduct payments due on their secured debts, despite the fact that they have surrendered or will surrender the collateral securing those debts. The U.S. Trustee objects to the deduction of these payments. Section 707(b)(2)(A)(iii) provides that the "debtor's average monthly payments on account of secured debts," are to be "calculated as the sum of-- the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and . . . any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts . . . divided by 60." *Id*. § 707(b)(2)(A)(iii).

The Debtors argue that the plain language of the statute does not require the debtor to reaffirm the secured debt in order to deduct the payment. They contend that, on the petition date, the payments on the surrendered collateral were "scheduled as contractually due" to secured creditors in some or all of the sixty months following the petition date. The Debtors urge the Court to hold that, so long as the Debtors, at the time they filed their petition, were contractually obligated to pay these payments in some or all of the sixty months subsequent to the petition date, the Debtors are allowed to deduct the average of those payments. Likewise, the U.S. Trustee argues that the plain language of the statute supports her position and submits that, because the means test is intended to determine whether a debtor would have sufficient disposable income during the post-petition period to pay creditors, permitting a deduction from CMI for payments that the Debtors do not intend, and will not be obligated, to make post-petition is contrary to the purpose of the statute. For this reason, she supports an interpretation of the statute that would permit the Court to consider all materials filed in the case, including the statement of intention, to determine whether the payments are "scheduled as contractually due to a secured creditor" in each of the sixty months following the petition date.

To determine the amount that may be deducted from CMI, "we must begin with the language of the statute itself." *In re T.H. Orlando, Ltd.*, 391 F.3d 1287, 1291 (11th Cir. 2004). "'The plain meaning of legislation should be conclusive, except in the rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the

intentions of its drafters.'" *In re Paschen*, 296 F.3d 1203 (11th Cir. 2002) (quoting *United States v. Ron Pair Enters., Inc*., 489 U.S. 235, 242 (1989)). In determining the plain meaning, "the Court must give meaning and import to every word in a statute." *In re Jass*, __ B.R. __, 2006 WL 871235, * 2 (Bankr. D. Utah Mar. 22, 2006) (citing *Negonsott v. Samuels*, 507 U.S. 99, 206 (1993)). However, "[i]n interpreting one part of a statute, 'we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" *In re Welzel*, 275 F.3d 1308, 1317 (11th Cir. 2001) (quoting *Philbrook v. Glodgett,* 421 U.S. 707, 713 (1975)).

Here, the amounts to be deducted from CMI on account of secured debts are those amounts that are "scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition." 11 U.S.C. § 707(b)(2)(A)(iii). "When statutory language has not been expressly defined, we are to give that language its common meaning." *In re Fretz*, 244 F.3d 1323, 1327 (11th Cir. 2001). Webster's Dictionary defines the word "schedule" as "to plan for a certain date." RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 1713 (2d ed. rev. 2001). The common meaning of "as contractually due" is that the debtor is legally obligated under the contract, in this case, a promissory note, to make a payment in a certain amount, with a certain amount of interest, for a set number of months into the future. Accordingly, payments that are "scheduled as contractually due" are those payments that the debtor will be required to make on certain dates in the future under the contract. These payments are limited by additional statutory

language to only those payments required in each of the sixty months after the petition is filed. For example, the debtor may have a car loan with a remaining payment term of only two years, or a mortgage with a remaining payment term of twenty years. The debtor would include only the remaining twenty-four months of the car loan payments, but would add all sixty months of the mortgage payments in order to calculate the average monthly payment on secured debts.

The parties appear to agree that, at the time of the filing of the case, the Debtors were contractually obligated to pay these three payments for varying lengths of time. The Court, therefore, finds that the payments were "scheduled as contractually due" at the time of filing. However, the statute also requires that the payments be due to a "secured creditor." The Debtors assert that the Court need look no further than the petition date to determine whether the payments at issue are “scheduled as contractually due to a secured creditor” in the months following the petition date. The U.S. Trustee submits that the Court should take into consideration the Debtors’ intention to surrender the collateral and concludes that, because the Debtors have surrendered or will surrender the collateral, the payments will no longer qualify as payments “scheduled as contractually due” to secured creditors during any of the sixty months post-petition.

The Court concludes that the plain language of the statute permits a reduction from CMI for payments on secured debts that have not been reaffirmed. Congress’ choice of the phrase, “scheduled as contractually due,” suggests that, in determining which payments

should be averaged for the deduction, the Court should determine how many payments are owed under the contract for each secured debt at the time of filing. This interpretation gives meaning to the word "scheduled," which implies the possibility that the payments may not be made as required under the contract, either because the debtor will surrender the collateral or because the payments might be modified and paid through a Chapter 13 plan. If the intent were to permit only those payments that would actually be made in the post-petition period, Congress could have specified that the payments to be deducted are only those payments to be made on secured debts that the debtor intends to reaffirm. For example, the second clause of section 707(b)(2)(A)(iii) also permits the debtor to deduct from CMI payments that would be required in a Chapter 13 case to "cure" and reinstate a secured debt through a Chapter 13 plan. This subsection limits such deductions only to those debts secured by collateral that is necessary for the debtor's support, such as a residence or a vehicle. Had Congress intended to limit the general deduction for secured debt payments to only those debts being reaffirmed or to those items of collateral necessary for the debtor's support during the post-petition period, it could have included similar language in the first clause of section 707(b)(2)(A)(iii). However, there are no such restrictions on the payments to be deducted under the former clause.

The use of the phrase "contractually due" also indicates an intent to permit a deduction for all secured debts, regardless of whether the debt is reaffirmed or the collateral is surrendered. The surrender of the collateral does not change the fact that the payments

are "contractually due." When a debtor files the bankruptcy petition, the debtor is contractually due for payments on the outstanding secured debts for the length of the contract. The debtor's contractual liability for the debt is not eliminated upon the surrender of the collateral. At the earliest, it may be eliminated by the entry of the discharge. At the latest, the contractual obligation may never actually be eliminated, but instead, the creditor would merely be enjoined from collecting the debt from the debtor *in personam*. *See Hall v. National Gypsum, Inc*., 105 F.3d 225 (5th Cir. 1997). In other words, nothing the debtor does or does not do changes the fact that scheduled payments remain contractually due.

Finally, the filing of the debtor's statement of intention indicating an intent to surrender collateral does not render the secured creditor an unsecured creditor. Following the filing of the case, the debtor may decide to amend the statement of intention to provide for reaffirmation of the debt or redemption of the property, or may even seek to reaffirm or redeem, notwithstanding the inability to amend the statement of intention. *See In re Rodgers*, 273 B.R. 186, 192 (Bankr. C.D. Ill. 2002) (permitting the debtor to redeem property, notwithstanding the debtor's failure to file the motion to redeem until after the expiration of the 45-day deadline); *see also In re Chance,* 1994 WL 16005470, *3 (Bankr. S.D. Ga. May 3, 1994) (holding that "a debtor may exercise his right of redemption at any time before the case is closed or a foreclosure sale of the property has occurred"). Even if the debtor does surrender the collateral, the surrender of the collateral does not change the fact that the payments are "scheduled as contractually due to a secured creditor." Following

the surrender of the collateral, the creditor remains a secured creditor at least until the collateral has been liquidated and the proceeds are applied to satisfy the debt.

If the U.S. Trustee's position is correct, all parties would have to wait until the debtor has surrendered the collateral and the creditor has liquidated the collateral and satisfied the debt before the court could correctly determine the number of months that the debtor should be permitted to include payments on the secured debt when determining the proper amount to deduct for average secured debt payments. Additionally, the means test requires the court to compare the debtor's remaining income, after deductions, to the amount of the debtor's priority unsecured debt. *See* 11 U.S.C. § 707(b)(2)(A)(I). Under the U.S. Trustee's interpretation, the court would have to take into consideration the fact that a formerly undersecured creditor would be entitled to file an unsecured claim for any deficiency remaining after the liquidation of the collateral. A proper application of the means test could not be conducted until the deficiency claim has been filed. Such an interpretation would significantly delay the debtor's ability to accurately complete the means test form, would delay as well the U.S. Trustee's review of the case, and would be an impractical approach.[2]

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[2] Additionally, even if the debtor indicates an intent to reaffirm a debt and does so, there is no guarantee that the creditor would in fact remain secured throughout the contract period. The debtor could default on the reaffirmed debt shortly after the reaffirmation, at which time the creditor could repossess and liquidate the collateral. However, because the Court will permit deductions for payments on secured debts owed at the time of filing, the Court will not be required to look beyond the state of affairs in existence at the time of filing, and subsequent events, such as an early pay off of the debt through the liquidation of the collateral, will not impact the result of the means test.

This result, as well as the structure of the means test itself, persuades the Court that Congress intended the test to be applied by reference to the debtor's financial condition on the petition date. The means test is a backward looking test, which is designed to measure the debtor's financial health at the time of the filing and to determine whether the debtor is in need of bankruptcy relief. The U.S. Trustee's position is anomalous. It requires the Court to take into consideration the impact of the debtor's ability to surrender collateral and discharge a debt, a remedy which would not be available outside of bankruptcy, to determine whether the debtor should be entitled to such relief in the first place.

Congress chose to base the means test on historic income and expense figures that are in effect on the petition date, as opposed to figures that may change with the passage of time or with a change in the debtor's lifestyle. This choice indicates an intent to apply the means test to measure the debtor's need for Chapter 7 relief at the time of the filing, without regard to future events or relief that would be available under Chapter 7. For example, the starting point for the means test, the debtor's CMI, is the debtor's income for the six months prior to filing. If the debtor becomes unemployed the day he files his petition, the debtor's CMI is not decreased by the amount of salary lost by the debtor simply because it is more accurate to assume that the debtor will make less unemployed than he did during the six months prior to the filing. Similarly, the standard expenses that may be deducted by the debtor, as stated in the IRS collection standards, are the expenses in effect on the petition date, rather than those expenses that will be in effect during the sixty months following the

filing of the petition. Congress chose to use fixed expenses for the entire sixty months, without regard to the fact that the IRS collection standards will surely be revised over the next five years and without regard to the debtor's actual expenses. When applying a test that essentially judges the debtor's financial situation as it exists at the time of filing, it would be inconsistent to consider post-petition events to determine whether the debtor is entitled to deduct secured debt payments.[3]

The U.S. Trustee makes the sensible argument that, because the purpose of the statute is to determine whether the debtor could afford to repay creditors through a Chapter 13 plan, the debtor should not be permitted to deduct from CMI amounts that will not be expended during the post-petition period in a Chapter 7 case. While this argument has appeal, as noted above, the U.S. Trustee's position is not consistent with the plain language of the statute. The Court cannot disregard the plain language of the statute unless the language would create an absurd result. The fact that the debtor's deduction of secured debt payments for debts that will not be reaffirmed does not produce an accurate picture of the debtor's post-petition financial condition is not a sufficient basis upon which to conclude that the

[3] The means test can be contrasted with the test for measuring the debtor's ability to fund payments on reaffirmed debts. In section 524(m), Congress provided that a reaffirmation agreement is presumed to create an undue hardship if the debtor's actual post-petition income minus actual expenses does not leave the debtor with sufficient funds to make the payment. Section 524(k)(6)(A) instructs the debtor to use "monthly income" and "actual current monthly expenses including monthly payments on post-bankruptcy debts and other reaffirmation agreements" to calculate this amount. 11 U.S.C. § 524(k)(6)(A). In contrast to the means test, this provision clearly intends the Court to consider whether the debtor intends to reaffirm debts.

plain language of the statute produces an absurd result.

It is true that the U.S. Trustee's method of completing the Debtors' Form B22 would more accurately ascertain the debtor's post-petition financial condition. However, section 707(b)'s presumption of abuse was not intended to and does not produce the most accurate prediction of the debtor's actual ability to fund a Chapter 13 plan. The statute hypothetically determines whether a debtor, after payment of what it defines as reasonable living expenses and payment of existing secured and priority debt, has excess disposable income available to pay a certain percentage of unsecured debts. The fact that Congress did not choose to use actual figures, as well as the structure of the test itself, convinces the Court that Congress intended for the means test to be applied based on the facts in existence at the time of the filing, without reference to what the debtor will do in the future. The means test is, after all, a mechanical estimate of the debtor's abilities to fund a Chapter 13 plan and was not intended to be a perfect indicator of ability to pay. The Court cannot ignore the plain language of the statute and read into it a requirement that the debtor reaffirm a secured debt in order to deduct the payment from CMI. Like section 707(b)(2)(A)(iii), many other provisions of the means test appear to operate contrary to the goal of accurately determining the amount of income that would actually be available for payments to unsecured creditors in a Chapter 13 case. The Court cannot disregard those provisions simply because they are inconsistent with reality.

As already mentioned, through its use of the defined term CMI as a starting point,

section 707(b)(1) relies on the debtor's income for the past six months, rather than the debtor's current or expected income going forward. The use of past income, without taking into consideration the debtor's current income, will not accurately gauge how much income would be available in a Chapter 13 plan that would last for five years. If a debtor expects to have substantial income going forward, but has had unusually low income in the past six months, no presumption of abuse will arise, notwithstanding the fact that the debtor, like the Debtors here, will actually have significant income available during the post-petition period.

The means test also relies on the use of living expenses set by the IRS National and Local standards, which may be either significantly less than or greatly in excess of the debtor's actual expenses. Again, as in the Debtors' case, the use of these hypothetical expenses may result in some debtors actually having more income available to pay unsecured creditors than the $167 per month that Congress deemed abusive. Nonetheless, the Court is not permitted to require a debtor to use actual expenses in order to calculate his or her deductions. These debtors would simply benefit from the fact that they have decided to live more frugally than Congress requires.

Even the amount of the debtor's average secured debt payments are not true reflections of what the debtor would be required to pay per month to secured creditors under an actual Chapter 13 plan. *See* COLLIER ON BANKRUPTCY, ¶ 707.05[2][c] (15th ed. 2005) ("But the deduction for secured claims is not in the amount that would be paid in chapter 13); Keith M. Lundin & Hank Hildebrand, *Section-by-Section Analysis of Chapter 13 After*

BAPCPA SL068 ALI-ABA 65 (July 21, 2005) ("The mathematical formula incorporated from § 707(b)(2) is unrelated to the provisions of the proposed plan and bears no obvious relationship to the amount of money that will actually be available from the debtor for payments to unsecured creditors if the plan is confirmed."). For example, if a debtor has a fully unsecured second mortgage, the debtor could completely "strip off" that mortgage through a Chapter 13 plan, and, although the debtor has chosen to retain the collateral, the debtor would not actually be required to make the secured payments on the second mortgage while in a Chapter 13 case. *See In re Tanner*, 217 F.3d 1357 (11th Cir. 2000). Despite the fact that the contract payment would not actually be made under a Chapter 13 plan, the debtor, even under the U.S. Trustee's position, would be entitled to deduct the full amount of the contract payments under section 707(b)(2)(A)(iii).

The Court shares the U.S. Trustee's concern that permitting the debtor to deduct secured payments that will not be paid during the post-petition period of a Chapter 7 case does not accurately calculate how much disposable income the debtor would have available to pay unsecured creditors in a Chapter 13 case. It is well recognized that a primary purpose of the BAPCPA amendments to section 707(b) is to "'ensure that those who can afford to repay some portion of their unsecured debts [be] required to do so.'" *In re Hardacre*, 338 B.R. 718 (Bankr. N.D. Tex. 2006) (quoting 151 CONG. REC. S2459, 2469- 70 (March 10, 2005)). However, the Court is also mindful of the fact that the pre-BAPCPA goals of providing honest debtors with a fresh start, as well as encouraging financially responsible

behavior and rehabilitation, remain part of the Bankruptcy Code. *See In re Jass*, __ B.R. ___, 2006 WL 871235, * 2 (Bankr. D. Utah Mar. 22, 2006) ("Although the changes to the Code under the BAPCPA serve to benefit creditors, the changes are not so broad as to undermine the "fresh start" policy of the Code."). When the Debtors filed their petition, they recognized that they were unable to meet their existing financial obligations and, therefore, they sought relief under the Code. They made a financially responsible choice to surrender property they could not afford in order to ensure that they received the fresh start afforded by Chapter 7.

In addition to demonstrating an intent to identify debtors who can afford to pay their unsecured creditors, Congress has also indicated an intent to protect debtors from entering unwise reaffirmation agreements. Through the BAPCPA, Congress amended section 524 to require specific disclosures to assist debtors in determining whether reaffirmation would be in their best interest. *See* 11 U.S.C. § 524(c). Congress also amended section 524(m) to provide a presumption that reaffirming a debt will impose an undue hardship upon the debtor if the debtor's actual post-petition income would not support the payment on the reaffirmed debt and to give the court the opportunity to disapprove such agreements. *See id*. § 524(m). Interpreting section 707(b)(2)(A)(iii) as the U.S. Trustee urges the Court to do could encourage debtors to reaffirm debts simply to obtain a Chapter 7 discharge, even if reaffirming the debt is not in the debtor's best interest. If debtors are told that reaffirming the debt will enable them to keep their property and obtain a Chapter 7 discharge, but

surrendering the property will leave them without a home or a vehicle and will also require them to pay a percentage of the resulting unsecured deficiency claim, in addition to a portion of their other unsecured debts, it is not difficult to imagine that debtors will choose reaffirmation and discharge. Debtors should be free to reject unwise reaffirmation agreements and to decline to retain property that they know they cannot afford. In such a manner, they can receive the fresh start promised by the Bankruptcy Code and eventually find a better means of obtaining replacement property.

Finally, the Court also notes that, whether the debtor passes or fails the means test is relevant only to the question of whether the U.S. Trustee will benefit from a presumption of abuse. In cases in which the presumption of abuse does not arise or is rebutted, the U.S. Trustee may pursue dismissal of a debtor's case under section 707(b)(3), which provides that the court may consider whether the "totality of the circumstances . . . of the debtor's financial situation demonstrates abuse."[4] 11 U.S.C. § 707(b)(3); s*ee also* Eugene Wedoff, *Testing in the New § 707(b)*, 79 AM. BANKR. L.J. 231, 236 (2005) ("[B]ecause the general abuse provisions of § 707(b)(3) expressly apply when the means test has been rebutted, 'passing' the means test does not preclude a discretionary finding of abuse by the court [,] if a debtor's overall financial circumstances would easily allow the debtor to repay debts . . . the court may find abuse."). *But see* Marianne B. Culhane & Michaela M. White, *Catching Can-Pay Debtors: Is the Means Test the Only Way?* 13 AM. BANKR. INST. L. REV.

[4] The Court does not herein decide whether section 707(b)(3) can be applied to dismiss the Debtors' case in this instance.

665, 666 (opining that "Congress intended the means test to be the only test of ability to pay under the revised Code").

CONCLUSION

Having carefully considered the arguments of counsel, the Court finds that the Debtors' interpretation of section 707(b)(2)(A)(iii) is consistent with the plain language of the statute and does not create an absurd result. Accordingly, the Court concludes that the Debtors are entitled to deduct from CMI the average payments on debts secured by surrendered collateral.

The Court had previously scheduled a hearing on the U.S. Trustee's Motion to Dismiss Pursuant to Section 707(b)(3) for May 5, 2006. **However, in light of the Court's ruling on this issue, the Court will instead consider that motion, along with any remaining issues arising in connection with the U.S. Trustee's Notice of Presumed Abuse and Motion to Dismiss Pursuant to Section 707(b)(2), on May 26, 2006 at 11:00 a.m. in Second Floor Courtroom, 18 Greenville Street, Newnan, Georgia.**

IT IS SO ORDERED.

At Newnan, Georgia, this _____ day of May, 2006.

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W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE